

I hereby certify that this Court Order and Attachment (Form CV 66) was served by First Class mail postage prepaid to Petitioner, M. Duke, at his most recent address of record in this action on this date.

Dated: 7/07/11

J. Holmes, Relief CRD

DEPUTY CLERK

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*See ATTACHED* ✓

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MELVIN DUKES,  
Petitioner,  
vs.  
WARDEN CASH, et al.,  
Respondents.

Case No. CV 11-5222-CJC (DTB)  
ORDER RE SUMMARY DISMISSAL  
OF ACTION

Petitioner, a California state prisoner currently incarcerated at California State Prison in Lancaster, California ("CSP-Lancaster"), purported to file a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") herein on June 22, 2011.

It appears from the face of the Petition that petitioner's claims are not directed to the legality or duration of petitioner's current confinement. Rather, petitioner's claims are directed to the conditions of his confinement at CSP-Lancaster. Specifically, petitioner contends that Warden Cash, Captain Henderson and CSP-Lancaster staff have removed the plastic glass from his cell door, which causes the heat to escape and allows flies and mosquitos to gain access to his cell. (Petition at 3.) Petitioner further alleges that the drinking water at CSP-Lancaster is "contaminated." (Petition at 4.)

1 Claims directed to the conditions of a petitioner's confinement may not  
2 properly be asserted in a habeas petition, or as part of a habeas petition. See 28  
3 U.S.C. § 2254(a); see also Preiser v. Rodriguez, 411 U.S. 475, 498-500, 93 S. Ct.  
4 1827, 36 L. Ed. 2d 439 (1973). Rather, such claims must be asserted in a separate  
5 civil rights action.

6 The Court does have discretion to construe petitioner's habeas petition as a  
7 civil rights complaint. See Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407,  
8 30 L. Ed. 2d 418 (1971); Hansen v. May, 502 F.2d 728, 729 (9th Cir. 1974).  
9 However, in this instance, the Court chooses not to exercise such discretion for the  
10 following reasons:

11 First, petitioner has failed to make an adequate showing of indigency. The  
12 Prison Litigation Reform Act of 1995 (Public Law 104-134, 110 Stat. 1321)  
13 ("PLRA") amended 28 U.S.C. § 1915 to provide, inter alia, that all prisoners who file  
14 civil actions must pay the full amount of the filing fee, and that any prisoner seeking  
15 to file a complaint in a civil action without prepayment of fees must submit a  
16 completed Declaration in Support of Request to Proceed In Forma Pauperis. In  
17 addition, prisoners must submit a certified copy of their prison trust fund account  
18 statement for the 6-month period immediately preceding the filing of his/her  
19 complaint, obtained from the appropriate official of the prison at which the prisoner  
20 is confined. See 28 U.S.C. §§ 1915(a)(1)-(2), 1915(b)(1). Here, when petitioner  
21 submitted his "Petition" for filing, he failed to submit a certified copy of his trust  
22 account statement for the last six months.

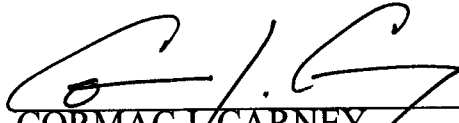
23 Moreover, as the current action was not submitted on a civil rights complaint  
24 form, certain critical information, such as the capacity in which the defendants are  
25 named, is lacking.

26 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United  
27 States District Courts, IT THEREFORE IS ORDERED that this action be summarily  
28 dismissed without prejudice. The Clerk is directed to send petitioner a blank Central

1 District civil rights complaint form, which petitioner is encouraged to utilize should  
2 he desire to pursue this action.

3 LET JUDGMENT BE ENTERED ACCORDINGLY.  
4

5 DATED: July 1, 2011  
6

7   
8 CORMAC J. CARNEY  
UNITED STATES DISTRICT JUDGE

9 Presented by:  
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12 David T. Bristow  
13 United States Magistrate Judge  
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\_\_\_\_\_  
FULL NAME

\_\_\_\_\_  
COMMITTED NAME (if different)

\_\_\_\_\_  
FULL ADDRESS INCLUDING NAME OF INSTITUTION

\_\_\_\_\_  
PRISON NUMBER (if applicable)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

\_\_\_\_\_  
*To be supplied by the Clerk*

v. PLAINTIFF,

DEFENDANT(S).

**CIVIL RIGHTS COMPLAINT  
PURSUANT TO** *(Check one)*

☐ 42 U.S.C. § 1983

☐ Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

**A. PREVIOUS LAWSUITS**

1. Have you brought any other lawsuits in a federal court while a prisoner: ☐ Yes ☐ No
2. If your answer to "1." is yes, how many? \_\_\_\_\_

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

- a. Parties to this previous lawsuit:  
Plaintiff \_\_\_\_\_  
\_\_\_\_\_  
Defendants \_\_\_\_\_  
\_\_\_\_\_
- b. Court \_\_\_\_\_  
\_\_\_\_\_
- c. Docket or case number \_\_\_\_\_
- d. Name of judge to whom case was assigned \_\_\_\_\_
- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) \_\_\_\_\_
- f. Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- g. Approximate date of filing lawsuit: \_\_\_\_\_
- h. Approximate date of disposition \_\_\_\_\_

## **B. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? ☐ Yes ☐ No
2. Have you filed a grievance concerning the facts relating to your current complaint? ☐ Yes ☐ No

If your answer is no, explain why not \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Is the grievance procedure completed? ☐ Yes ☐ No

If your answer is no, explain why not \_\_\_\_\_  
\_\_\_\_\_

4. Please attach copies of papers related to the grievance procedure.

## **C. JURISDICTION**

This complaint alleges that the civil rights of plaintiff \_\_\_\_\_  
(print plaintiff's name)

who presently resides at \_\_\_\_\_  
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

\_\_\_\_\_  
(institution/city where violation occurred)

on (date or dates) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(Claim I) (Claim II) (Claim III)

**NOTE:** You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

\_\_\_\_\_  
\_\_\_\_\_

2. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

\_\_\_\_\_  
\_\_\_\_\_

3. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

\_\_\_\_\_  
\_\_\_\_\_

4. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

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5. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

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## D. CLAIMS\*

### CLAIM I

The following civil right has been violated:

[illegible]

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right.

[illegible]

*\*If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.*



## E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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(Date)

(Signature of Plaintiff)